

# **Piercing through the Gloom: the Nexus of Migrant Networks, Empowerment and National Treatment to Combat Human Trafficking**

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First of all, it's a pleasure to be here. I would like to thank the UNESCO Bangkok office, especially UNESCO Bangkok office, led Dr. Sheldon Shaeffer, as well as Dr. David Feingold and all the staff at the UNESCO Trafficking Project for their hard work to host this important seminar. I would also like to commend my colleague at UNDP, Dr. Lee Nah Hsu, for joining with us at UNIAP to provide both intellectual and financial support to this effort. And of course, I would like to thank all of you for turning out at this venue, which is a long way from the main AIDS conference event out at Muang Thong Thani. Perhaps rather than calling this a 'parallel' conference, we should have termed it a 'remote' one! Nevertheless, we have an overflow room today, showing that the topic is timely and the organizers behind the scenes have done a superb job.

Coming down Sukhumvit Road to this meeting, I lost track of how many "Welcome Delegates" signs I saw for the big event in town, the 15<sup>th</sup> International AIDS Conference the International AIDS conference being held at another, much larger venue in Bangkok. But suffice to say, the elephant symbol for the this massive international conference on AIDS is everywhere you look on the streets today. Traditionally, the saying is to 'skewer some sacred cows' but today, I hope to skewer a 'few sacred elephants' that exist in the set of common beliefs about human trafficking. Since this is indeed Bastille Day, it's an entirely appropriate day for storming castles, and the castle of popular perception about human trafficking is getting larger, and more lopsided, every day. Of course, skewering sacred animals of any sort is not a terribly productive exercise unless one also proposes some ways forward, along a different path, and that I will do that today as well.

UNIAP has supported this parallel conference to ensure there is some exposure on the issue of trafficking and migration in relation to HIV/AIDS during this week. Equally important, we wanted to make sure there was some focus on the structural impediments that need to be dealt with if we are ever going to do more than just talk around and around in meetings (as the UN is wont to do) about the issue of human trafficking in the GMS.

Today, I hope to cover the following issues and points, and I will look forward to having an opportunity to engage with all of you in a discussion on them. These points are key, in my view:

First, our core focus on human trafficking should be the issue of forced labor and migration – and not just trafficking into commercial sex/prostitution. The overwhelming focus of the international community, the media, and many donors on trafficking into commercial sex has meant that other forms of human trafficking have been continuously de-emphasized, and in some cases, disregarded as a footnote. Other forms of human trafficking – whether it be for the purposes of industrial sweatshops in Thai suburban row-houses, deep sea fishing, construction, or other types of labor – are just as grievous in the harm that they inflict on their victims. Look at the physical abuse of maids, scalded by hot irons, and deformed by beatings – or the deaths of fishermen, shot and thrown overboard when they can no longer keep up with the 16 to 17 hour work days on the boat.

Second, while recognizing that we need to help victims of trafficking, we also need to recognize that we need to make structural changes (political, economic, social) to alter the frameworks and change the policies that aid and abet trafficking in persons. The focus on the individual level, on the victim – while important – should not permanently distract us to structural fixes that need to take place if we are to make progress in solving the problem. Certainly, for many a case by case approach is emotionally satisfying, but we need to make sure that we are doing something more than trying to empty the ocean, one bucket at a time.

Third, and this speaks to the structural approach, we need to increasingly tap the networks and engage in the places where the information on human trafficking (how and where it takes place) exists – which is in the migrant communities! The problem today is that this information is often not accessed, the migrants are not usually provided with an opportunity to have a voice, and there is certainly no protection from retaliation (by traffickers, or by corrupt government officials) when they do inform others about what they know. Compounding this problem has been a singular lack of political will by governments, both North and South, to acknowledge the role of migrant workers, and recognize their rights should be protected. This lack of engagement with those who have the front-line information about trafficking contributes to the ‘gloom’ around the trafficking issue – that oft-repeated mantra that there is little good information on what is happening.

In some cases – like those of Lao and Khmer migrant workers in Thailand – there is a dearth of networks of informed migrants who can serve as key informants on where and how human trafficking is taking place. Where these networks do not exist, why are anti-trafficking organizations supporting efforts to organize them? And can't we use some of the political deference shown to international organizations, and especially UN agencies, to help protect these networks when they face trouble from employers, or corrupt local government officials? Unless we are prepared to actually use some of the political capital that comes with status as the UN, and demonstrate that willingness in concrete action, why would migrant workers trust us? The answer is that they won't.

The fact that migrants do not come forward with this information is a direct result of their lack of power. Quite simply, they have learned that the best survival strategy in a place like Thailand for migrants has been to keep your head down, and run fast – and steer clear of any sort of government official, most especially the police. Yet increasingly we hear voices from the international community, and the U.S. and some European governments, urging increased focus on prosecutions – which means for the trafficked migrant worker, in whatever sort of work, even closer engagement with the police. Given what we know about the shoddy and sometimes criminal way that migrants are treated by the police at the local level in the Mekong countries, why are we surprised when we find the trafficking victim often just wants to forget the experience and get on with his/her life?

Fourth, if we want to build support in the migrant worker communities, we need to talk in a language that they understand – which is equality, in wages, treatment, and rights, with national workers. Real national treatment of migrant workers – meaning that a worker is treated equally no matter what his/her national origin, or legal status – is the real human rights approach that we need to work on. Saying to a Burmese worker that ‘you will be treated the same as a Thai worker’ is conceptually very clear and empowering to them – since their entire existence in Thailand is defined by the fact that they do not have rights, they are not equal, and they could be arrested, locked-up, abused, sold, and/or deported at any time. Even those migrant workers with legitimate documents tell stories of work papers or UNHCR documents be ripped up at will by Thai police.

This is why when I talk to migrants, I often refer to trafficking as straight-forward “slavery” and add that it is the “worst form of migration”, because there is already a lot of pretty bad experiences they are comparing these things against. For Burmese workers, I tell them that they assumed that ‘forced labor’ only existed in Burma – but the fact is that if you are not careful, ‘forced labor’ can exist for you in Thailand as well.

Fifth and finally, let me add that migrant empowerment – helping them know and exercise their rights – will provide better opportunities to target these groups for other interventions, like preventing HIV/AIDS, or improving education for their children, or advocating to solve structural causes of vulnerability, such as the failure to provide migrant children with proper birth registration.

So why is so little being done towards this migrant-oriented, structural approach that would get us better information, increase access to informants who really know what is going on, and enable us to undertake empowerment activities to organize and support the migrant activists?

Well, suffice to say that my boss at the UN, J.K. Robert England, the UN Resident Coordinator, has come up with a very appropriate observation when he says that “there is more heat than light” in the issue of human trafficking.

My observation is that moral outrage, often connected to sexual morality, dominates the debate, often displacing the facts on the ground, and making dispassionate analysis impossible. This is also part of the gloom that I refer to – the hype that one more brothel raid, or one more TV expose will somehow change the dynamic here of human exploitation that feeds human trafficking in Southeast Asia, or elsewhere. But this approach sells the issue, with Northern publics, donors, and headquarters staff of far too many NGOs and UN agencies rushing to design yet another project to combat human trafficking. The media is highly culpable in spreading this view, because, let’s face it: nothing sells newspapers like a story on sex slaves.

Think of a few examples and you will see what I mean:

How many salacious prime time TV exposes have there been of "sex slavery" happening right down the street, or just next door? Of course, the formula requires a hidden camera 'rescue' at some point during the show.

What should we say about Nicholas Kristof of the *New York Times*, playing the pathetic role of a modern day Don Quixote in Cambodia, buying out girls' from brothels in Poi Pet (resulting in a cash windfall for the brothel owner), driving them across Cambodia to return 'home', and then being surprised and betrayed when surprise, one of the girls immediately turns around and goes back to sex work? Why did a supposedly respectable newspaper like the *New York Times* give this pap such prominent play in its pages, and on its web-site? Why shouldn't the hare-brained scheme being purveyed by Bernie Krisher, the editor of the *Cambodia Daily* to buy girls out of brothels be laughed down – rather than taken seriously by many who should know better?

And of course the picture would not be complete without the rhetoric of the self-appointed 'new abolitionists', seeking to eradicate all forms of prostitution through edicts, threats, and conditions emanating from an axis formed between the ivory towers of American academia and ideologues among the Roman columns of Washington, D.C. Yet another example of unilateral U.S. foreign policy, long on wind and short any sort of understanding or appreciation of the situation on the ground.

There are certainly women, men, and children who are trafficked into commercial sex work, and they need our assistance and support. But the challenge is also to be strategic. Is this really possible if lowest common denominator outrage, magnified by the media, is used to define the areas where we must work?

I would argue that focusing for instance, solely on the worst forms of child labor (for instance, as defined by ILO convention no. 182), like sex trafficking, deals with a small segment of cases while ignoring larger structural edifices and practices that facilitate trafficking. As activists fighting against child labor found out a decade ago, solely tilting against child labor and focusing on prosecutions of those who employ children does little to alter the environment of powerlessness (of poor families, and children) that fuels child labor. The woven rug industry of Pakistan and India required more than just raids on sweatshops to reform – it also required a consumer labeling initiative, education initiatives and creation of schools, support from communities and employers, and a coalition of donors and consumer organizations prepared to monitor and support the efforts.

The Rugmark campaign, and the work to support it, was based on an organizing model, involving local activists, international consumers, and concerted international advocacy and pressure. It was a sophisticated, strategic, and multi-faceted campaign. To date, I have seen nothing that compares to it from the anti-trafficking community. Even the most basic labor union solidarity campaign has more sophistication than the 'advocacy' campaigns on human trafficking that I have seen.

For instance, many of us believe that the Thai fishing industry benefits from the use of trafficked labor, especially men from Laos, Burma, and Cambodia. Thailand is also one of the biggest seafood exporters in the world. Why has no one tied these two facts together, and taken it to the European and American publics that consume much of that Thai seafood?

Critically, if we are to make real progress in combating the issue of trafficking, we need to re-define our focus and priorities. If the debate about trafficking can be lightened to a circus tent (and given some of the characters involved, a clown metaphor is appropriate), then I would argue that the center pole of the tent, on which all other tent poles depend, must be forced labor. What we are talking about here is a forced labor paradigm, as opposed to the sex/prostitution paradigm. The forced labor paradigm is more comprehensive, since at its core, trafficking into sexual exploitation is also a form of forced labor.

The fact is that migration and exploitative labor are the core elements of the trafficking equation in the Greater Mekong Sub-region. Commercial sexual exploitation is a sub-category of exploitative labor. Most persons migrate for work, and in the process of movement, put themselves in vulnerable situations (where they lack community backing, language skills, and knowledge) in order to earn money.

Yet comparatively little focus has come on reducing vulnerability, through practical efforts to educate and organize migrant workers; set up effective hot-line response and referral services *in the migrants' languages* (Burmese, Khmer, Lao); provide interpretation and legal services to migrant workers in trouble; and to end employer practices and limit government corruption that combine to create an exploitation trap for migrant workers.

Very little focus goes on trying to improve the overall environment to end forced labor situations. Systematic enforcement of labor laws, through determined inspection of commercial establishments and a willingness to imprison and fine employers that violate the labor law, seems to be largely outside the anti-trafficking discussion. Much focus goes on training police about trafficking, but when was the last time you heard about a training course for labor inspectors from a Ministry of Labor about trafficking?

Trafficking is best understood as movement, force, and exploitation – with the end result being critical, the “worst form of migration.” Horror stories of what happened to someone abound in the migrant communities in Thailand. You name the abuse – it could be one of many, such as forced labor for fishing; forced labor in garment sweatshops; forced labor in an overseer system in rural agriculture; forced labor as a domestic servant; and, of course, forced labor in commercial sex.

To understand why it is so critical to embed the trafficking issue in the migrant process, and deal with the problem from the perspective of migrant vulnerability, here are some interesting facts on the ground to consider.

The Greater Mekong Sub-region is characterized by massive & unstoppable movements of people across borders. Academics and informed observers have estimated that there are over 2 million illegal migrants in Thailand, with 70% from Burma/Myanmar. If one considers that Burma/Myanmar has 50 million in population, just half of that number is equivalent to 2% of the total population of that country. Looking at the 1998 census in Cambodia, one finds that 5.9% of the population originates from outside of Cambodia (mostly from Vietnam) and more than 35% of Cambodians have migrated between provinces. We're all waiting for Jim Chamberlain's report on Laos, but I will bet that the scale of migration will rival that which was seen inside Thailand, between ethnically Lao Esarn region of the northeast and the central plains in the late 1970's, 1980's and early 1990's – when Thailand had one of the most internally mobile populations in the world.

Needless to say, border control is virtually impossible – with huge un-patrolled areas of the border, and common ethnic groups on both sides of the border which have been communicating, trading, and inter-marrying for centuries. In fact, most of the officials of the various Mekong countries treat border control as a local money-spinner of graft and influence. Most Burmese migrants I've spoken to in Bangkok came down by a police vehicle, or with a relative of police to get through the check-points.

The paths of movement are nothing less than astonishing in their levels and complexities. There are Burmese, Khmer, Lao and Chinese going to Thailand, for fishing, begging, domestic work, construction, services, you name it. There are Vietnamese women traveling to China, and Khmer beggars trafficked into Ho Chi Minh City. Meanwhile, Vietnamese women move and/or are trafficked into Cambodia, and sometimes on to Thailand and Malaysia. Chinese travel to Thailand, sometimes through Myanmar/Burma, and sometimes direct, and then in many case, continue onward to other countries in Asia, Europe, and North America.

What fuels these movements is the extreme poverty and huge economic disparities among different parts of the Mekong sub-region. Consider the fact that Thailand is ranked 74<sup>th</sup> on the Human Development Index ranking developed by UNDP. Yet it's immediate neighbors, with whom it shares long and porous borders, are at many as sixty slots lower in the ranking. Cambodia ranks at 130 on the HDI scale, while Myanmar is one rung lower at 131, and Lao PDR trails both of them at 135. Comparatively, Thailand's GDP per capita is roughly six times higher than Myanmar's.

Age also plays a major factor in the huge flows of migration in the Mekong sub-region. Again, Thailand's neighbors is a major proportion of several countries populations (Cambodia – 42.5% under 15 & Lao PDR, 42.4% under 15) coupled with a lack of employment and severe under-employment. The 'bright lights, big city factor, with Thai TV beamed all over Laos and northwestern Cambodia (where there are populations that understand Thai), should also not be underestimated when dealing with these primarily young, migrant-prone populations. Faced with the prospect of a life-time as a subsistence farmer in rural Laos, how many of you would jump at the opportunity for something else?

Law enforcement at the community level in the GMS tends to be pathetic or non-existent, both in terms of generating causes for departure, and for obstructing efforts to prevent trafficking. I distinctly remember in 1999 when the former Cambodian MP Kem Sokha, who had been the Chair of the Cambodia lower house's Human Rights Subcommittee, telling me that the largest source of human rights complaints were connected to land disputes. Most observers would agree that the situation remains the same today in Cambodia, with the rich and well-connected cheating or intimidating the poor off desired lands. The result is a collapse of those poor families' survival schemes, and the need to send children to Phnom Penh, or across border, to work and send back money.

Similarly, the corruption of local, provincial and national authorities by employers or influential individuals mean that abuse of workers, especially migrant workers, can continue with impunity. Failure to pay the minimum wage even for Thai workers in Thailand is prevalent, particularly in the small and medium enterprise level, is widespread. Bring in migrants, and the gloom that conceals these exploitative labor relationships are further deepened by different languages, and a resulting lack of voice for the workers.

Recently, the Thai Ministry of Labor found that among *registered business establishments*, 70% were small in scale, employing just 1 to 9 employees. If we look to find all workplaces where the number of employees is less than 100 employees, once finds that this accounts for 96.3% of all workplaces in Thailand. In the year 2000, 41% of all workplaces inspected were found to be violating labor law provisions on employment of women and children. But then again, not that many were inspected – since there were only 700 or so labor inspectors in the entire country, meaning that the average safety & health inspector would have to inspect 1680 factories per year just to keep pace.

Not only in Thailand, but throughout the GMS, wide swathes of the economy are beyond any effective regulation – such as small restaurants, karaoke parlors, small shop-house businesses, street vendors, small-scale agricultural workers, etc. The extremely low rates of trade union density in the sub-region is not only explained by restrictions on freedom of association for workers in Laos, Vietnam, China, and Burma, but also because so much of these economies are informal, and for all practical purposes, unable to be organized. It is also worth recalling that of all the GMS countries, Thailand is perhaps the *most well resourced and positioned* to effectively police conditions of work and regulate its labor market, yet clearly it is not able to do so.

The facts speak for themselves. The World Bank found in 2001 that 30.3% of Thai workers toiling in the formal sector are not paid the minimum wage – which in Bangkok today is 170 baht per day. In 8 years of working on labor issues in Thailand, I have met only one migrant worker from Burma who was actually receiving the minimum wage – but, he said, he was also working 14 hours a day to do it!

So what can be done?

Well first, the principle of national treatment needs to be fully guaranteed for migrants – so that they have a set of basic rights in law which are enforceable. Not only does this mean the right to be protected from being trafficked, but it also means the right to freedom of movement, expression, association, and other conditions of work contained in the relevant labor laws. Making national treatment for migrants a reality will help bridge the divide between migrant workers and organized national workers. Unions understand 'national treatment' – because they insist on one standard for all, ideally the highest standard possible. I know that there have been efforts to find ways for Burmese workers in garment factories in Mae Sot to be represented by Thai unions (which is technically possible under the Thai Labor Relations Action of 1975), and this right will become even more relevant as all migrant workers in Thailand are legally registered and theoretically not deportable on the whim of employers or officials.

But to really pierce the gloom – and create a set of key informants, and critically a set of first responders to trafficking situations – there need to be groups and networks of empowered migrant workers, who are supported by groups of national NGOs and organized labor, as well as international NGOs, donors, and Embassy officials.

My experience in working on HIV/AIDS programs with migrants is that like underground rivers, streams of migrants have their own ways of moving, communicating, gathering, and responding to changes in situations. These ways include gathering at Buddhist temples (*wats*) on a day off for Shans; organizing meetings during festivals on the Karen holiday calendar; reaching migrants through radio programs in their own language; and locating interventions at the movement choke points (usually provincial towns and cities off the border) through which migrants move.

Support for migrant worker organizing and anti-trafficking investigations should be provided to groups like the Migrant Karen Labor Union (MKLU) which operates in the Mahachai area; the Federation of Trade Unions – Kawthoolei (FTUK) along the Thai-Burma border; the migrants section of the Federation of Trade Unions – Burma (FTUB); the Seafarers Union of Burma (SUB), and Empower and the Shan Women's Action Network. The Action Network for Migrants in Thailand, composed primarily of Thai NGOs, should be supported in their work to empower migrants and build networks that can intervene when trafficking of persons in that community occur.

And where networks of empowered migrants don't yet exist – such as among Khmer workers and Lao workers in Thailand – ways must be found to organize them. In the case of the Lao, a start has been made with the creation of a Border Esan Action Network (BEAN), composed of Thai NGOs, but there is still much more to be done.

We need to look at the Hong Kong model of empowerment for domestic workers/maids from Thailand, the Philippines, and Indonesia. These workers are legally hired, and covered by the labor law, but more than that, they are

represented by NGO networks that provide services and make referrals, give legal advice, and interact closely with the labor attaches in the consulates of these three countries in Hong Kong. Cases of violence and sexual abuse against maids are usually quickly uncovered, and the victims are protected and the offenders prosecuted.

We need to look at the Tenganita model from Malaysia – building a community of diplomatic concern for migrant workers, with a core ideology that if "you help with my cases and I'll help with yours" built among diplomats, and the diplomats acting in an almost collective bargaining manner with the host government to seek improvements in the way migrants are treated.

We need to bring migrants into legal fold, so that when they or their organization protests, or files a court case, they have some sort of standing that allows a case to proceed.

One of the tools that can be used is an employment cooperation agreement between countries, like those facilitated by ILO between Thailand and Laos, Thailand and Cambodia, and Thailand and Burma. By creating legal agreements on the sending and receiving of workers, and ensuring that those migrant workers are treated in full accordance with all aspects of the receiving country's labor law, an empowered core of a migrant worker network can be formed. The first and greatest fear of the migrant workers is being fired and deported – thereby, losing everything they have struggled for. When workers have portability of employment – i.e. the right and ability to change employers, especially leaving an abusive employer – then their ability to resist and escape abusive work arrangements, including trafficked labor situations, is buttressed by law.

Empowered migrant workers who are connected into a network will also be able to play a critical role in identifying and calling down enforcement actions against abusive employers. Organizations like the MKLU have already demonstrated the ability to surreptitiously investigate trafficking cases, but they still must interact through intermediaries since they dare not approach Thai government regulators directly. Abusive employers benefiting from trafficked labor must be treated in accordance with the brutal Chinese adage: "killing the chicken, and showing it to the monkeys." Only this kind of demonstration effect will hopefully alter many employers' current cost-benefit analysis in Thailand (and elsewhere in the Mekong region) that the benefits of using trafficked labor far outweigh the potential costs, since the chance of being caught, publicly embarrassed, and imprisoned/fined is so remote.

This will, at a minimum, require that the dominance of the 'social welfare' approach to trafficking prevalent in most Mekong Governments' thinking be altered to also include a focus on labor. However, during discussions in the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) process, the issue of labor and trafficking came up. At that time, one of the Governments went so far to say that "labor is one thing, trafficking is another, I don't know why we are talking about them together." This goes to show the education task that lies ahead of us if we are to bring a paradigm shift in the trafficking discussion.

Fundamentally, offering real national treatment (as encapsulated in the national labor law) to migrant workers in terms of wages, conditions of work, and labor rights will again create an empowered core of migrant workers who are more willing and able to take risks to identify and take action to help migrants who have been trafficked, or are in the process of being trafficked. I have no illusions that this will be easy, since I recognize that the principle undercuts one of the main reasons that employers want migrant workers – which is to cut their wage bills significantly. In the case of sectors where trafficking is more prevalent, such as fishing and commercial sex, better wages in other competing labor sectors (such as factory work, domestic service/maids) would reduce the impetus to enter those more risky sectors.

Ultimately, the paradigm that needs to be forged is one that is characterized by a creative inter-action between organizing/mobilization for migrant workers (through networks and migrant support groups/NGOs), building up law enforcement and ensuring that migrant workers are given the legal right to use the courts for redress, and using exposure/media along with other international campaigning strategies pioneered by labor organizations and NGOs.

And finally, because I work for the UN, no set of recommendations I can make is complete without including at least one recommendation to ratify some international legal instrument.

In this case, I would urge us all to seriously campaign for all six Mekong Governments to immediately ratify the UN Migrants Convention, which is formally known as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Convention is precisely relevant here because it explicitly provides for extension of national treatment and labor rights to migrants that I believe is fundamental to alter the structures that keep migrants oppressed, and hugely vulnerable to human trafficking.

Thank you again to UNESCO for hosting this important meeting, and to all of you for having the patience to give me an opportunity to present some provocative ideas today. I look forward to your comments.